Supreme Court, U.S.
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No. 96-897

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

CHARLES BOOKER,
Petitioner,
v.
JAMES WARD, THOMAS KELLY, WILLIAM OWENS and TORRENCE LEWIS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a cause of action alleging an unreasonable seizure accrues at the time the seizure occurs, or later, if the individual seized is prosecuted as a result of the seizure.

2. Whether the finding of a state court in a criminal case that an individual has been unreasonably seized has preclusive effect in a subsequent federal civil rights action against police officers who were not parties to the prior criminal action and who would not be bound by such a finding under applicable state law.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1a-10a) is reported at 94 F.3d 1052 (7th Cir. 1996). Of the three written opinions of the district court, the first (Pet. App. 12a-15a) is unreported, the second (Pet. App. 16a-29a) is reported at 888 F. Supp. 869 (N.D. Ill. 1995), and the third (Pet. App. 30a-42a) is reported at 905 F. Supp. 483 (N.D. Ill. 1995).

STATEMENT

Lucy Williams ("Williams"), the fiancée of petitioner Charles Booker ("Booker"), was murdered in the early morning hours of August 7, 1987. Pet. App. 2a, 17a. Her partially clad body was found next to her car in a secluded parking lot behind her apartment at 7108 South Cottage Grove in Chicago. *Id.* at 2a, 33a. Her pants and underpants had been pulled down to her ankles; a rubber floor mat from her car had been placed over her groin area. *Id.* at 2a. She was murdered between 4:00 and 4:30 a.m., the time she usually left home for work. *Ibid.* She was partially dressed in business attire, apparently on her way to work at a very early hour. *Id.* at 33a. She had been bludgeoned to death about her head. *Ibid.*

Detectives Kelly and Ward, the detectives assigned to investigate this murder, arrived at the scene at about 8:45 a.m. Pet. App. 2a. They observed that although Williams' pants and underwear were pulled down, there were no injuries or other signs of rape or sexual assault. *Ibid.* Detectives Kelly and Ward believed that only someone who knew Williams would have the desire to cover her private parts with a car mat and, thereby, prevent the exposure of her groin area to the public; in their experience, a random attacker would not have been concerned with covering her groin area after a brutal and fatal attack. *Id.* at 2a. Additionally, the attack appeared as if it may have been planned; the front left tire of Williams' car was flat and a piece of metal protruded from it; Detectives

Kelly and Ward believed the killer may have wished to prevent her from leaving the area. *Id.* at 2a-3a. Based on their experience, the physical evidence they observed at the scene pointed to someone who may have known Williams and her schedule; and the tremendous beating, confined to the area about Williams' head, indicated "overkill" by someone who was enraged with her. *Id.* at 2a, 33a-34a.

At the scene, Detectives Kelly and Ward interviewed Williams' family and several of her neighbors. Pet. App. 34a. Williams' son informed them that his mother had gone on a date and had returned between 8:30 and 8:45 p.m. *Id.* at 3a. When he last saw his mother around 10:30 p.m., she was alone in her bed at the apartment. *Ibid.* A neighbor told Detectives Kelly and Ward that she had heard a scream between 4:00 and 4:30 in the morning. *Ibid.* Detective Kelly drew the conclusion that Williams had been killed as she was getting ready to leave for work between 4:00 and 4:30 a.m., by someone who knew her work schedule. *Id.* at 34a-35a.

Detectives Lewis and Owens, also working on this case, went to Williams' apartment, and while they were there, Booker showed up. Pet. App. 3a. Detective Owens then contacted Detective Kelly, who asked Detective Owens to ask Booker if he would voluntarily accompany Detectives Lewis and Owens to the police station to help in the investigation. *Ibid.* Detective Owens relayed this request to Booker. *Ibid.* Booker agreed to accompany Detectives Lewis and Owens because "he wanted to help in any way he could." *Ibid.* On the way to the station, they stopped for soft drinks and cigarettes. *Ibid.* They arrived at the station between 11:30 and 11:45 a.m., and Booker waited for Detectives Kelly and Ward to return from conducting their field interviews. *Ibid.* When Booker asked why he was being held, Detectives Lewis and Owens told him he was not being held and asked him to wait for Detectives Kelly and Ward to return. *Ibid.* Before Detectives Kelly and Ward returned, Detective Owens and another officer

examined Booker's fingernails and shoes. *Id.* at 3a. When Detectives Kelly and Ward returned, no one told them of this examination. *Ibid.*

Meanwhile, Detectives Kelly and Ward conducted a number of interviews. Pet. App. 3a. Elaine Sims ("Sims"), Williams' first cousin, told Detectives Kelly and Ward that Williams and Booker had had a relationship, and that Williams had asked Booker to move out of her apartment because she no longer wished to live with or marry him. *Ibid.* Williams had also had an abortion after she became pregnant by Booker, although she had concealed this fact from Booker by telling him that she had a miscarriage. *Ibid.* Detective Kelly thought that the abortion could have caused Booker to become enraged. *Id.* at 9a. Sims also told the detectives that Booker was a heavy drinker, would forget what he had done, and was a very jealous man. *Id.* at 3a-4a.

Detectives Kelly and Ward returned to the police station between 1:00 and 1:30 p.m. Pet. App. 4a. At about 2:00 p.m., Detectives Kelly and Ward spoke with Booker to ascertain Williams' personal habits and any other information they could gather about her. *Id.* at 35a-36a. During this interview, Booker explained what he had been doing during the previous evening—drinking, visiting with friends, sleeping at his other girlfriend's house, calling the victim's home to discover she was out and then calling again and speaking with Williams. *Id.* at 4a. At no time did Booker state he had seen Williams or driven by her house the night before. *Id.* at 36a.

Detectives Kelly and Ward discovered Booker had no fingerprints on file. Pet. App. 4a. Booker agreed to provide fingerprints and also agreed to take a polygraph examination, after being told his participation was purely voluntary. *Ibid.* Before taking the polygraph, Booker read and signed a form indicating that he understood his rights and that his participation was voluntary. *Ibid.*

After the polygraph, the examiner informed Detectives Kelly and Ward that Booker was being "untruthful and uncooperative." Pet. App. 4a. The examiner then told Booker he was being untruthful and uncooperative. *Ibid.* In response, Booker admitted he previously had lied about what he had done the night before. *Ibid.* He told the examiner that he had driven by Williams' house twice during the late evening and early morning hours of August 6-7. *Id.* at 37a. At this time, Booker was informed he was under arrest. *Id.* at 4a. He later confessed to beating Williams to death with a pipe. *Ibid.*

Booker was convicted of murder and sentenced to 30 years imprisonment. Pet. App. 18a. On appeal from his conviction, he claimed he had been "seized" without probable cause when the police inspected his hands and feet between 11:30 a.m. and 2:00 p.m. As a result, he argued, his inculpatory statements were inadmissible. The Illinois Appellate Court agreed with Booker, ruling that he had been wrongfully seized prior to confessing. *People v. Booker,* 568 N.E.2d 211 (Ill. App. 1991) (Pet. App. 43a-53a). The appellate court stayed Booker's conviction and remanded for an attenuation hearing to determine if Booker's statements were otherwise admissible. Pet. App. 18a. On remand, the trial judge held that Booker's confessions were admissible because the statements were sufficiently attenuated from the unlawful arrest. *Id.* at 19a. On appeal, in an unpublished decision, the Illinois Appellate Court rejected the trial judge's decision on attenuation and reversed Booker's conviction. *Ibid.* (Pet. App. 54a-61a). On October 11, 1994, the State's Attorney nolpossed the charges and Booker was released. *Id.* at 19a.

Booker filed a pro se complaint on August 21, 1990, against Detectives Kelly, Ward, and Glynn, and other public officials, alleging, among other things, a violation of his constitutional rights actionable under 42 U.S.C. § 1983. Pet. App. 1a, 16a. On September 27, 1991, the district court granted summary judgment to the other

public officials not respondents in this Court (Pet. App. 12a-15a), and on February 24, 1992, it dismissed the remainder of Booker's claims without prejudice to their reinstatement upon the conclusion of Booker's criminal case. *Id.* at 2a. Booker reinstated the suit on November 11, 1994. *Ibid.*

On February 13, 1995, Booker filed a two-count amended complaint naming, in addition to Detectives Kelly, Ward, and Glynn, Detectives Lewis and Owens, and the City of Chicago. Pet. App. 2a, 16a. In count I of the amended complaint, Booker alleged a Section 1983 claim for arrest without probable cause in violation of the Fourth Amendment against Detectives Kelly, Ward, Glynn, Lewis and Owens. *Ibid.* In count II, Booker alleged a state-law malicious prosecution claim against Detectives Kelly and Ward, and the City of Chicago. *Id.* at 2a n.1, 16a.

On May 9, 1995, the district court dismissed the Section 1983 claim against Detectives Lewis and Owens on the ground that it was time-barred; the court also dismissed the malicious prosecution claim in its entirety. Pet. App. 16a-29a. On October 13, 1995, the district court granted summary judgment in favor of Detectives Kelly and Ward, concluding that they had probable cause to arrest Booker and hence did not violate the Fourth Amendment, and in any event, were entitled to qualified immunity. Pet. App. 30a-42a. Booker appealed, contesting only the dismissal of his federal claims, and on August 29, 1996, the court of appeals affirmed the judgment of the district court, concluding that Booker's Section 1983 claim against Detectives Lewis and Owens was time-barred, and that the remaining defendants had demonstrated that they had probable cause to arrest Booker and hence were entitled to summary judgment on Booker's Fourth Amendment claims against them. Pet. App. 1a-10a.

ARGUMENT

Although Booker claims that he was arrested without probable cause in violation of the Fourth Amendment, he failed to bring suit against Detectives Lewis and Owens for more than seven years after this allegedly unreasonable seizure, and the limitations period for Section 1983 actions in Illinois is only two years. As for Detectives Kelly and Ward, Booker does not quarrel with the conclusion of the court of appeals that they had probable cause when they arrested him. Instead, Booker attempts to use his prosecution in state court to avoid both of these problems. He claims that his cause of action did not accrue until that prosecution had terminated, and he claims that the findings of the state appellate court in that case, and not the record made below, should control his claim of arrest without probable cause. Neither submission can be squared with this Court's precedents. Accordingly, the petition for certiorari should be denied.

1. The general rule is that a cause of action accrues and the limitations period begins running when the plaintiff learns of an illegal act, and not when its consequences are felt. See *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam); *Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980). Here, the allegedly illegal act—an unreasonable seizure in violation of the Fourth Amendment—occurred on August 7, 1987. See Pet. App. 2a-4a. But Booker did not sue Detectives Lewis and Owens until February 13, 1995. See *id.* at 5a. The statute of limitations for Section 1983 claims arising in Illinois is two years. See, *e.g.*, *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993). Since Booker did not sue Detectives Lewis and Owens within two years of their allegedly illegal arrest of him, and since Booker plainly knew of their involvement in that arrest and hence was able to bring suit within the limitations period, the court of appeals quite sensibly concluded here that Booker's claims

against Detectives Lewis and Owens were time-barred. See Pet. App. 5a-7a.[1]

Booker nevertheless argues that he can overcome this limitations problem because, under his reading of *Heck v. Humphrey*, 114 S. Ct. 2364 (1994), his Fourth Amendment claim did not accrue until the criminal case against him was dismissed. See Pet. 7-8. In *Heck*, this Court held that Section 1983 claims that would have the effect of rendering the plaintiff's conviction invalid do not accrue until the plaintiff's conviction has been vacated. See 114 S. Ct. at 2372. The Court reasoned that when a plaintiff, in order to prevail on a Section 1983 challenge, would have to "negate an element of the offense of which he had been convicted," a Section 1983 claim goes to the validity of a criminal conviction and cannot properly be raised in a Section 1983 action so long as the conviction is outstanding. See *id.* at 2372 n.6. Accordingly, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 2372. "But if the district court determines that the plaintiff's action, even if successful will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should . . . proceed . . . ." *Ibid.* (emphasis in original).

Accordingly, *Heck* holds that only those claims that necessarily impugn the validity of a conviction accrue

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[1] In *Albright v. Oliver*, 114 S. Ct. 807 (1994), Justice Ginsburg expressed the view that an individual arrested without probable cause is subjected to a "continuing seizure" that does not end until the prosecution ends, and that only then does the limitations period begin to run. See *id.* at 815-16 (concurring opinion). This view has never been embraced by a majority of the Court, and has been rejected by a number of circuits. See, *e.g.*, *Brooks v. City of Winston-Salem*, 85 F.3d 178, 184 (4th Cir. 1996); *Reed v. City of Chicago*, 77 F.3d 1049, 1052 & n.3 (7th Cir. 1996); *Valencia v. Wiggins*, 981 F.2d 1440, 1443-45 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). In any event, Booker has never advanced a "continuing seizure" theory during the litigation in this case.

when the conviction is vacated. Booker's claims do not fall in that category. The fact that a case against an arrestee was initiated by an unreasonable search or seizure does not mean that the charge against him—or a subsequent conviction—is invalid. If the prosecution can adduce sufficient evidence not tainted by the Fourth Amendment violation, then it can sustain both the charges and an ensuing conviction. In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Court made the point quite clearly: "[T]he established rule [is] that illegal arrest or detention does not void a subsequent conviction." *Id.* at 119. The Court reiterated in *United States v. Crews*, 445 U.S. 463 (1980), that "[a]n illegal arrest, without more, has never been viewed . . . as a defense to a valid conviction." *Id.* at 474. And in *Haring v. Prosise*, 462 U.S. 306 (1983), the Court held that a prisoner's action to recover for an illegal search and seizure was not barred by his plea of guilty to possessing items found in the search; the validity of the conviction "is simply irrelevant to the legality of the search under the Fourth Amendment or Prosise's right to compensation from state officials under § 1983." *Id.* at 316. See also, *e.g.*, *Guerro v. Mulhearn*, 498 F.2d 1249, 1254 (1st Cir. 1974) ("false arrest, or an illegal search and seizure . . . may constitute a compensable wrong while not undergirding the validity of the criminal conviction to which it might be related"). Indeed, in *Heck* itself, the Court offered as an example of the type of claim that would not impugn the validity of a conviction "a suit for damages attributable to an allegedly unreasonable search . . . even if the challenged search produced evidence that was introduced in a state criminal trial . . . ." 114 S. Ct. at 2372 n.7. This is "[b]ecause of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." *Ibid.* (emphasis in original) (citations omitted).

Thus, the inquiry dictated by *Heck* is whether a Section 1983 claim "necessarily" implies the invalidity of a conviction, not whether success on the claim would taint some of the evidence offered as part of the prosecution's case. Surely no one would argue that if Booker had been convicted on the basis of untainted evidence he could not bring suit to recover for an arrest without probable cause. That Fourth Amendment cause of action is simply not dependent on the outcome of state-court criminal proceedings. For that very reason, the Fourth Amendment cause of action accrues when the right to be free from unreasonable seizure is infringed.

Here, Booker himself has not claimed any necessary relationship between the alleged Fourth Amendment violation and the validity of his conviction. He has focused instead on the fact that the evidence that was actually obtained as a result of his confession was sufficiently important to the criminal proceeding that the prosecution was unwilling to retry him without it. See Pet. App. 6a. That is not the type of "necessary" relationship between a constitutional violation and the validity of a conviction that is required under *Heck* to postpone the accrual of a claim. As the court of appeals correctly reasoned here:

> [A] wrongful arrest claim, like a number of other Fourth Amendment claims, does not inevitably undermine a conviction; one can have a successful wrongful arrest claim and still have a perfectly valid conviction. Although in this case the Illinois Appellate Court's conclusion that Booker's confession was the inadmissible product of an unlawful arrest ultimately resulted in the dismissal of murder charges against Booker, in many cases the prosecutor will have other witnesses or other evidence that will support a retrial. As it happens, here the prosecutor did not have such other evidence to produce against Booker. But there is nothing necessary or inevitable about that result.

Pet. App. 6a (citations omitted).

As Booker acknowledges, the Fourth Circuit has taken the same approach when applying *Heck* to claims of false arrest under Section 1983 as did the Seventh Circuit here. See *Brooks v. City of Winston-Salem*, 85 F.3d 178, 182-83 (4th Cir. 1996); Pet. 7. Booker claims, however, that seven other circuits have taken a different approach. See Pet. 7-8.

Most of the cases Booker cites are not inconsistent with the holding below. For example, the decision in *Smithart v. Towery*, 79 F.3d 951 (9th Cir. 1996) (per curiam), actually supports the holding of the Seventh Circuit here. Smithart claimed that he had been subjected to excessive force during the course of an arrest that resulted in his criminal conviction. Although the court observed that *Heck* bars his claims "[t]o the extent that Smithart seeks to invalidate his assault conviction" (*id.* at 952), it went on to observe that his claim of excessive force had in fact accrued because "a successful section 1983 action for excessive force would not necessarily imply the invalidity of Smithart's arrest or [assault] conviction," *ibid.*

Two of the other cases Booker cites are about so-called malicious prosecution claims, and not false arrest claims like his. In *Calero-Colon v. Betancourt-Lebron*, 68 F.3d 1 (1st Cir. 1995), plaintiffs sued for malicious prosecution and each one claimed that he "did not know the true nature and extent of the scheme that led to arrest until after he had been acquitted." *Id.* at 2. Under those circumstances, the court held that their cause of action did not accrue until acquittal. See *id.* at 3-4. In *Whiting v. Traylor*, 85 F.3d 581 (11th Cir. 1996), the plaintiff also brought a Section 1983 action for "malicious prosecution," and the court concluded that because malicious prosecution actions depend on the outcome of state proceedings, such a cause of action does not accrue until state proceedings terminate. See *id.* at 585-86. Regardless of whether these cases correctly apply accrual principles to Section 1983 actions for "malicious prosecution" (assum-

ing that there is such a cause of action under Section 1983), Booker, of course, presses only a false arrest claim, and hence these cases have little bearing here.[2]

Jackson v. Vannoy, 49 F.3d 175 (5th Cir.) (per curiam), cert. denied, 116 S. Ct. 148 (1995), is also quite different from this case. There, the plaintiff's parole had been revoked solely on the basis of his arrest, and hence a claim that he had been illegally arrested would necessarily have impugned the validity of his parole revocation. See *id.* at 176-77. Here, as we explain above, the invalidity of Booker's arrest would not necessarily or inherently have been a defense in the criminal case against him.

Finally, *Mackey v. Dickson*, 47 F.3d 744 (5th Cir. 1995) (per curiam), is just unhelpful, since the pro se complaint was "confusing." *Id.* at 746. The court could not tell if Mackey's claims necessarily impugned the validity of his conviction, so it remanded for such a determination by the district court. *Ibid.*

As for Booker's three remaining cases, we acknowledge that the decisions are inconsistent with the decision below. In each case, the court concluded that allegations that an unreasonable seizure produced evidence that was important to the prior criminal case against the plaintiff stated a cause of action that would not accrue until the plaintiff's conviction is vacated. See *Hudson v. Hughes*, 98 F.3d 868, 871-72 (5th Cir. 1996); *Schilling v. White*, 58 F.3d 1081, 1085-86 (6th Cir. 1995); *Woods v. Candela*, 47 F.3d 545, 546 (2d Cir.) (per curiam), cert. denied, 116 S. Ct. 54 (1995). With respect, we think these decisions misapprehend the Court's decision in *Heck* as well as the settled rule from other of the Court's cases that allegations of an unreasonable search or seizure do not invalidate a subsequent conviction, and hence are not necessarily inconsistent with that conviction. What is more, the ration-

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[2] Whether a Section 1983 cause of action exists for claims of malicious prosecution is very much an open question in this Court. See generally *Albright v. Oliver*, 114 S. Ct. 807 (1994).

ale for the view that claims of false arrest accrue when the constitutional violation occurs and not when subsequent criminal proceedings are terminated has never been more forcefully explicated than in the decision below, and it may well cause other circuits to modify their views. Thus, there is no need for the Court to grant plenary review in order to examine a conflict in the circuits that may well disappear of its own accord.

2. While Booker does not quarrel with the correctness of the holding below that Detectives Kelly and Ward had probable cause to arrest him, he nevertheless urges that that holding be repudiated because the Illinois Appellate Court reached a different conclusion in the state criminal case against Booker. Booker advocates "a strict rule that the finding by a state appellate court that an arrest was made without probable cause is enough evidence to defeat the arresting officer's motion for summary judgment on the same issue in a federal civil rights case." Pet. 8. Booker cites no authority in support of this "strict rule," and with good reason—it is utterly consistent with settled law.

Booker's policy argument that "[a] decent respect for the state courts" should require a federal jury to hear a Fourth Amendment claim that state courts have found meritorious (Pet. 9) is misplaced given that the preclusive effect the federal courts give to the findings of state courts is governed by statute. Federal courts must give the same preclusive effect to the judgment of a state court that is afforded to that judgment by the courts of the rendering state. See 28 U.S.C. § 1738. Thus, a finding of a state court is entitled to preclusive effect in federal proceedings only if the courts of the state in which the finding was made would also afford it preclusive effect. See, *e.g.*, *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 482 (1982). In fact, under Section 1738 a federal court may not afford greater preclusive effect to the decision of a state court than it would receive in the courts of the rendering state. See, *e.g.*, *Marrese v. American Academy*

of Orthopaedic Surgeons, 470 U.S. 373, 375, 384-86 (1985); *Migra v. Warren City School District*, 465 U.S. 75, 81-85 (1984).

Given the statute, Booker in effect asks this Court to grant plenary review on a question of state law—whether Illinois courts would grant preclusive effect to the findings in the criminal case against Booker in a subsequent civil action brought against Detectives Kelly and Ward. Booker does not explain why this state-law question merits plenary review, nor does he explain why under Illinois law any preclusive effect would be granted to the finding on which he relies in subsequent civil litigation against arresting officers. In fact, Illinois law is to the contrary in at least two respects.

First, under Illinois law, a judgment can be given preclusive effect only against the parties to a prior case and those in privity with them. See *Ballweg v. City of Springfield*, 499 N.E.2d 1373, 1375 (Ill. 1986); *Housing Authority v. YMCA*, 461 N.E.2d 959, 962 (Ill. 1984). Here, of course, Detectives Kelly and Ward were not parties to the criminal case against Booker, which was brought by the State's Attorney. Booker does not even claim that under Illinois law police officers involved in a criminal case are in privity with the State's Attorney, and there is little authority for such a suggestion. See generally *Wilson v. City of Chicago*, 707 F. Supp. 379, 386 (N.D. Ill. 1989) (using Illinois privity law), aff'd in part and rev'd in part, 6 F.3d 1233 (7th Cir. 1993), cert. denied, 114 S. Ct. 1844 (1994); *People v. Woollums*, 379 N.E.2d 1385, 1390 (Ill. App. 1978).

Second, Illinois courts apply preclusive effect only when the identical fact found in a prior case is material to resolution of the later case. See *Ballweg*, 499 N.E.2d at 1375; *Housing Authority*, 461 N.E.2d at 962. The state appellate court here found that Booker had been "seized" sometime between 11:30 a.m. and 2:00 p.m. See Pet. App. 51a. In making that finding, the state court relied

particularly on the visual inspection of Booker's hands and feet and on what other detectives and officers said to Booker before Detectives Kelly and Ward returned to the station. Because of these interactions, the court determined Booker no longer could have felt free to leave, and he was therefore "seized" within the meaning of the Fourth Amendment. See *ibid.* The court further determined that probable cause was lacking at this time and, thus, the seizure was unreasonable. See *id.* at 51a-53a. These events, however, took place before Detectives Kelly and Ward arrived to question Booker, and there was no finding that Detectives Kelly and Ward were the cause of anything that happened to Booker while he waited for them at the station, or even that they were aware of what had happened to Booker at the station. Nor did the state court attribute responsibility to anyone in particular as having caused Booker's seizure. Yet, in a Section 1983 action, a defendant can only be held liable for the actions he takes. *E.g., Kentucky v. Graham,* 473 U.S. 159, 165-66 (1985). Indeed Section 1983 does not authorize imposition of vicarious liability on a civil rights defendant for the actions of another. See *Monell v. Department of Social Services,* 436 U.S. 658, 691-94 (1978). Because the state appellate court did not adjudicate the question whether Detectives Kelly and Ward bore any personal responsibility for the seizure without probable cause, that court's finding thus cannot bind Detectives Kelly and Ward in this case where their individual liability is at stake.

To be sure, the appellate court went on to say that probable cause did not exist at the time Booker was formally arrested by Detectives Kelly and Ward. See Pet. App. 51a-53a. Yet, given the court's holding that Booker had been seized sometime before 2:00 p.m., its finding on whether probable cause existed at 5:00 p.m. was an alternative holding not necessary to the court's resolution of the case. Because this issue was not necessary to the court's result, Illinois courts would not afford it preclusive effect in a subsequent case, as we explain above. See *Housing Authority,* 461 N.E.2d at 962.

For these reasons, Booker's advocacy of "respect" for the findings of a state court leads, in this case, to the anomalous result that a federal court would give greater effect to the findings of the Illinois Appellate Court in subsequent civil litigation than Illinois courts would themselves grant to those findings. That outcome makes little sense and cannot be reconciled with Section 1738.

In any event, even aside from the effect that the appellate finding would have under state law, the federal courts will grant preclusive effect to the findings of a state court only when the party facing preclusion has had a full and fair opportunity to litigate in the prior state-court proceeding. See *Kremer*, 456 U.S. at 480-81; *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Here, as we explain above, Detectives Kelly and Ward were not parties to the criminal case against Booker, nor were they in control of the litigation decisions made by the State's Attorney. Having had no full and fair opportunity to protect their own interests in the prior criminal case, Detectives Kelly and Ward should not be bound by the result in that case, as the court of appeals held. See Pet. App. 7a-8a.

For his part, Booker cites only *Stone v. Powell*, 428 U.S. 465 (1976), to support his argument on this point. See Pet. 8. In that case the Court held that when an individual convicted in state court has had a full and fair opportunity to litigate a Fourth Amendment claim seeking the exclusion of evidence in state criminal proceedings, he may not renew that claim in a federal habeas corpus proceeding. 428 U.S. at 481-82. Of course, in such a case, the federal habeas petitioner was a party to the state criminal proceedings, and hence can fairly be held to the outcome of those proceedings. Here, Detectives Kelly and Ward were not parties to the state-court proceeding, and cannot be bound by it.

Finally, even aside from the legal problems with Booker's novel theory of preclusion, if embraced, that theory

will lead only to meaningless federal trials. Booker does not claim that he is automatically entitled to prevail against Detectives Kelly and Ward because of the prior finding. He contends only that the state court's finding constitutes "enough evidence to defeat the arresting officer's motion for summary judgment on the same issue in a federal civil rights case." Pet. 8. Booker, however, does not quarrel with the holding below that there is no genuine issue of fact on the question whether Detectives Kelly and Ward had probable cause to arrest him. Since there is no genuine issue of fact here, the import of Booker's proposed rule would merely be that the district court would be obligated to enter a directed judgment against him at the close of his case at a trial; the standard for what evidence is sufficient to grant summary judgment in favor of a defendant is no different from the standard for what evidence is sufficient to direct a verdict at trial (*e.g.*, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-52 (1986)), and thus precisely because Booker's evidence cannot withstand a motion for summary judgment, neither could it withstand a motion for a directed judgment at the close of his case. Whatever point there is to entitling a federal plaintiff to receive a trial that he cannot win escapes us.[8]

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[8] Moreover, Booker's petition overlooks the defense of qualified immunity, to which arresting officers are entitled when a plaintiff alleges arrest without probable cause unless the officers violated clearly established law. See *Hunter v. Bryant*, 502 U.S. 224, 227-29 (1991) (per curiam). Even if this Court were to accept the state court's finding, as Booker contends it should, such a reading does not mean that Detectives Kelly and Ward violated clearly established law at the time they acted, thereby depriving them of the protection of qualified immunity. Hence if the Court granted review it might be unable to reach the question Booker presses because the officers would be entitled to qualified immunity irrespective of its answer.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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